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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,458	02/18/2004	Floyd Backes	160-052	1742
34845	7590	10/12/2006	EXAMINER	
McGUINNESS & MANARAS LLP			PHILPOTT, JUSTIN M	
125 NAGOG PARK			ART UNIT	
ACTON, MA 01720			PAPER NUMBER	
			2616	

DATE MAILED: 10/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	Application No. 10/781,458	Applicant(s) BACKES ET AL.	
	Examiner Justin M. Philpott	Art Unit 2616	

**– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –**  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 April 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to claims 1-6 have been considered but are moot in view of the new ground(s) of rejection. Specifically, the newly added limitations in amended claims 1 and 6 are taught by the newly cited art of Pinard et al. as discussed in the following office action.

### ***Terminal Disclaimer***

2. The terminal disclaimer filed on April 10, 2006 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of the full statutory term of any patent granted on pending reference Application Number 10/780,595, filed on February 18, 2004, has been reviewed and is accepted. The terminal disclaimer has been recorded. Accordingly, applicant has overcome the double patenting rejections in the previous office action of January 23, 2006.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication No. US 2004/0054767 A1 by Karaoguz et al. in view of U.S. Patent No. 6,580,700 to Pinard et al.

Regarding claim 1, Karaoguz teaches an apparatus in an access point (e.g., access point 115, see FIG. 1) in a wireless communications environment (e.g., wireless network 110) including multiple access points (e.g., see paragraphs 0019-0021 regarding a plurality of access points) and stations (e.g., wireless devices 120a-120n), wherein stations (e.g., 120a-120n) gain network access by associating with one or more of the access points (e.g., 115), comprising: logic for keeping track of one or more parameters related to the stations in the network (e.g., gathering and storing statistical information such as location and identity information of the wireless devices 120-120n, power levels, channel cycling, frequencies, coverage area, traffic patterns, etc., see paragraph 0024); logic for evaluating the one or more parameters to produce an evaluation (e.g., see paragraph 0033 regarding location information processor determining the distance range using the gathered or stored information); and logic for causing a station (e.g., 120a-120n) to become associated with the access point (e.g., 115) based upon the evaluation (e.g., see paragraph 0045 regarding modifying the network to achieve optimized network configuration based upon the location information and statistical information; see also paragraph 0021 regarding a wireless devices receiving coverage from an access point in the geographic area upon the access point powering on, and paragraph 0028 regarding adjusting transmission power levels for optimal network configuration for continued coverage in accordance with the stored information; see also paragraph 0033 regarding location information processor for determining the distance range which is used for causing a station to become associated with an access point).

Karaoguz may not specifically disclose receiving messages from the stations indicative of a request to associate with the access point and selecting thereafter one of the stations by the access point. However, Pinard, like Karaoguz, also teaches access point and station communications (e.g., see abstract), and further, Pinard specifically teaches an access point having logic for receiving messages from stations indicative of a request to associate the access point (e.g., see col. 5, lines 17-18 regarding “the mobile unit (MU) ... sends out a probe packet to all access points (APs)”) and logic for selecting one of the stations from which the message was received (e.g., see col. 5, lines 23-26 regarding “the probe packet is detected by all access points within range ... and a subset of those access points sends out a probe response packet”). Additionally, the teachings of Pinard provide a wireless communication system with maximum data throughput while accommodating a plurality of data rates (e.g., see col. 2, line 38 – col. 3, line 36). Thus, at the time of the invention it would have been obvious to one of ordinary skill in the art to apply the access point and station communication teachings of Pinard to the access point and station communications of Karaoguz in order to provide the wireless communication system of Karaoguz with maximum data throughput while accommodating a plurality of data rates (e.g., see Pinard at col. 2, line 38 – col. 3, line 36).

Regarding claim 2, Karaoguz teaches logic for receiving messages from stations, wherein the messages include at least some of the one or more parameters (e.g., see paragraphs 0029-0038 regarding determining device location, and specifically paragraph 0036 regarding the wireless device sending a range message acknowledgement).

Regarding claim 3, Karaoguz teaches a parameter is the number of stations associated with the access point (e.g., inherently represented by the identity information of each wireless device associated with the access point, see paragraph 0024).

Regarding claim 4, Karaoguz teaches a parameter is the distance of a station (e.g., wireless device 120a-120n) from the access point (e.g., 115) (e.g., see paragraphs 0029-0038, and specifically paragraph 0029 regarding determining a distance range location information of a wireless device).

Regarding claim 5, Karaoguz teaches at least some of the one or more parameters are stored in a table (e.g., see paragraph 0040 regarding the information being stored in a data memory unit within the access point, inherently comprising a table).

Regarding claim 6, as discussed above regarding claims 1-4, Karaoguz teaches an apparatus in an access point (e.g., access point 115, see FIG. 1) in a wireless communications environment (e.g., wireless network 110) including multiple access points (e.g., see paragraphs 0019-0021 regarding a plurality of access points) and stations (e.g., wireless devices 120a-120n), wherein stations (e.g., 120a-120n) gain network access by associating with one or more of the access points (e.g., 115), comprising: logic for keeping track of one or more parameters related to stations in the network (e.g., gathering and storing statistical information such as location and identity information of the wireless devices 120-120n, power levels, channel cycling, frequencies, coverage area, traffic patterns, etc., see paragraph 0024); logic for evaluating the one or more parameters to produce an evaluation (e.g., see paragraph 0033 regarding location information processor determining the distance range using the gathered or stored information); and logic for causing a station (e.g., 120a-120n) to become associated with the access point (e.g.,

115) based upon the evaluation (e.g., see paragraph 0045 regarding modifying the network to achieve optimized network configuration based upon the location information and statistical information; see also paragraph 0021 regarding a wireless devices receiving coverage from an access point in the geographic area upon the access point powering on, and paragraph 0028 regarding adjusting transmission power levels for optimal network configuration for continued coverage in accordance with the stored information; see also paragraph 0033 regarding location information processor for determining the distance range which is used for causing a station to become associated with an access point), in order to gain network access to communicate with other stations via the access point (e.g., see paragraph 0015 regarding, “all communications between the devices 120a, 120b, 120c, 120d, ... 120n or between the devices and the wired network 105 can go through the node or Access Point 115”). Further, as discussed above regarding claim 2, Karaoguz teaches logic for receiving messages from stations, wherein the messages include at least some of the one or more parameters (e.g., see paragraphs 0029-0038 regarding determining device location, and specifically paragraph 0036 regarding the wireless device sending a range message acknowledgement). Still further, as discussed above regarding claim 3, Karaoguz teaches a parameter is the number of stations associated with the access point (e.g., inherently represented by the identity information of each wireless device associated with the access point, see paragraph 0024). Finally, as discussed above regarding claim 4, Karaoguz teaches a parameter is the distance of a station (e.g., wireless device 120a-120n) from the access point (e.g., 115) (e.g., see paragraphs 0029-0038, and specifically paragraph 0029 regarding determining a distance range location information of a wireless device).

Karaoguz may not specifically disclose receiving messages from the stations indicative of a request to associate with the access point and selecting thereafter one of the stations by the access point. However, Pinard, like Karaoguz, also teaches access point and station communications (e.g., see abstract), and further, Pinard specifically teaches an access point having logic for receiving messages from stations indicative of a request to associate the access point (e.g., see col. 5, lines 17-18 regarding “the mobile unit (MU) ... sends out a probe packet to all access points (APs)”) and logic for selecting one of the stations from which the message was received (e.g., see col. 5, lines 23-26 regarding “the probe packet is detected by all access points within range ... and a subset of those access points sends out a probe response packet”). Additionally, the teachings of Pinard provide a wireless communication system with maximum data throughput while accommodating a plurality of data rates (e.g., see col. 2, line 38 – col. 3, line 36). Thus, at the time of the invention it would have been obvious to one of ordinary skill in the art to apply the access point and station communication teachings of Pinard to the access point and station communications of Karaoguz in order to provide the wireless communication system of Karaoguz with maximum data throughput while accommodating a plurality of data rates (e.g., see Pinard at col. 2, line 38 – col. 3, line 36).

### ***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin M. Philpott whose telephone number is 571.272.3162. The examiner can normally be reached on M-F, 9:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chi Pham can be reached on 571.272.3179. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Justin M. Philpott

  
CHI PHAM  
SUPERVISORY PATENT EXAMINER

10/10/06